



Department of Energy
Acquisition Regulation

No. 99-02
Date 03/11/99

ACQUISITION LETTER

The Procurement Executive is issuing this Acquisition Letter through a delegation from the Secretary and under the authority of the Federal Acquisition Regulation (FAR), Section L301(aX2).

*** * * Plain Language Note * * ***

In his memorandum dated June 1, 1998, the President directed the Federal Government to begin using plain language in its written communications. This Acquisition Letter is one of the first that we are issuing in a revised format as part of our continuing effort to comply with the intent of the President's request. We will publish future Acquisition Letters in this plain language format and we welcome your comments on our approach, as well as your suggestions for additional ways we can simplify our written products - please contact Kevin Smith in the Office of Procurement and Assistance Policy at kevin.m.smith@hq.doe.gov or at 202-586-8189.

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Subject: 1999 Executive Compensation

References:

DEAR 970.3102-2
DEAR 970.5204-13

Compensation for personal services
Allowable costs and fixed-fee
(Management and operating contracts)
Allowable costs and fixed-fee (support
contracts)

DEAR 970.5204-14

When is this Acquisition Letter (AL) Effective?

This AL is effective 10 days from the date of issuance. This guidance supersedes any previous statutory cap on executive compensation. Existing contracts need to be reviewed to determine whether contract terms and conditions are consistent with the guidance in this AL, or whether contract modifications are necessary.

When does this AL Expire?

This AL remains in effect until superseded or canceled.

Whom do you Contact for more Information?

Contact the Office of Procurement and Assistance Policy.
For questions pertaining to the statutory limits, contact Terry Sheppard,
(Terry.Sheppard@hq.doe.gov or 202-586-8193).

The term 'senior executive' means: (1) the contractor's Chief Executive Officer or any individual acting in a similar capacity; (2) the contractor's four most highly compensated employees in management positions other than the chief executive officer; and (3) if the contractor has intermediate home offices or segments that report directly to the contractor's corporate headquarters, the five most highly compensated employees in management positions at each such intermediate home office or segment.

However, section 804 of the FY99 Defense Authorization Act, modifies the FY98 definition to read as follows:

The term 'senior executives,' with respect to a contractor, means the five most highly compensated employees in management positions at each home office and each segment of the contractor.

The main distinction between the FY98 coverage and the FY99 coverage is that the FY98 definition limited the cap to "senior executives at intermediate home offices or segments that report directly to the contractor's corporate headquarters."

By contrast, the FY99 language broadened the definition of a senior executive by deleting the direct reporting limitation and expanding the definition to "the five most highly compensated employees in management positions at each home office and each segment of the contractor."

Currently, there are three different definitions of the class of covered executives and two different salary caps that apply to years 1997, 1998, and 1999. For the respective periods (dates are inclusive) they are:

1. October 1, 1996-September 30, 1997 Salary Cap-\$250,000
(AL 97-05 provided implementation instructions.)
2. January 2, 1998-January 1, 1999 Salary Cap-\$340,650
(AL 98-07 provided implementation instructions.)
3. January 2, 1999- Salary Cap-\$340,650
See following for definition and implementation instructions.

What is the Guidance Contained in this AL?

A. Allowable/Unallowable Costs: Contracting Officers shall ensure that the May 11, 1998 amendments to the DEAR are included in modifications to, or extensions of existing contracts which are subject to the DEAR Subpart 970.31 cost principles:

The definition of the term "compensation" was not changed by Section 804 of the FY99 Defense Authorization Act. Compensation for costs incurred after January 1, 1999, means: the total

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- Salary actions due to recruitment or promotion are limited to the lesser of a maximum of 10 percent above the candidate's current salary, or a maximum of 6 percent above the prior incumbent's reimbursed salary.
- Salary increases which are neither recruitment nor promotion actions, shall not exceed 6 percent per annum.
- Except for promotions and "acting" situations, only one salary increase per individual is permitted during any twelve month period.
- A salary increase shall be within the contractor's original salary range for the position and in accordance with the contractor's salary increase distribution program.
- A salary increase shall not exceed industry benchmarks.

NOTE: The foregoing parameters apply to contractor executive salary approval only. The salary approval requirements are not to be confused with the maximum total compensation limitation which limits the allowability of compensation for contractor senior executives. Also, the maximum salary limitation and the maximum percentage increase limitation will be issued by the Procurement Executive before the beginning of each fiscal year based on analysis conducted by a team of DOE Headquarters and field representatives.